

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

ROBERT MITCHELL,

Plaintiff,

vs.

TORRIE CARDER, DOCTOR FLECK,  
and C.U.S. RANDOLF,

Defendants.

NO. CV-08-083-FVS

ORDER DISMISSING FIRST AMENDED  
COMPLAINT AND DENYING MOTION FOR  
SUMMARY JUDGMENT

**1915 (g)**

BEFORE THE COURT are Plaintiff's fourth "First Amended Complaint" (Ct. Rec. 60) and a Motion for Summary Judgment (Ct. Rec. 61), which he noted for hearing without oral argument on July 21, 2008. It was heard on the date signed below. Plaintiff, a prisoner at the Monroe Correctional Complex, is proceeding *pro se* and *in forma pauperis*; Defendants have not been served.

An amended complaint functions as a complete substitute for, and not a mere supplement to, any prior complaint. Therefore any allegations not presented in the First Amended Complaint received on June 30, 2008, are deemed to have been waived. *Hal Roach Studios v. Richard Feiner & Co.*, 896 F.2d 1542, 1546 (9th Cir. 1990) ("an amended pleading supersedes the original"); *King v. Atiyeh*, 814 F.2d 565 (9th Cir. 1987).

ORDER DISMISSING FIRST AMENDED COMPLAINT AND DENYING MOTION FOR  
SUMMARY JUDGMENT -- 1

1 After review of this fourth "First Amended Complaint" (Ct. Rec.  
2 60), the court finds it fails to cure the deficiencies of the initial  
3 complaint. Plaintiff did not present it on the form provided to him  
4 as directed in the Order to Amend (Ct. Rec. 26).

5 In this amended complaint, Mr. Mitchell claims Defendant Torrie  
6 Carder knows the names of persons who allegedly interfered with his  
7 mail at the Washington State Penitentiary. He contends Defendant  
8 C.U.S. Randolph issued a memo which quoted WAC Rules, and instructed  
9 Plaintiff not to forward mail through his mother. Plaintiff alleges  
10 nothing against Dr. Fleck.

11 Although granted numerous opportunities to do so, Plaintiff has  
12 failed to present a complaint which states a claim upon which relief  
13 may be granted against named Defendants. Ivey v. Board of Regents,  
14 673 F.2d 266, 268 (9th Cir. 1982); See Hamilton v. Endell, 981 F.2d  
15 1062, 1067 (9th Cir. 1992). Therefore, **IT IS ORDERED** the First  
16 Amended Complaint (Ct. Rec. 60) is **DISMISSED with prejudice** under 28  
17 U.S.C. §§ 1915(e)(2) and 1915A(b)(1). **IT IS FURTHER ORDERED**  
18 Plaintiff's Motion for Summary Judgment (Ct. Rec. 61) is **DENIED as**  
19 **moot.**

20 Pursuant to 28 U.S.C. § 1915(g), enacted April 26, 1996, a  
21 prisoner who brings three or more civil actions or appeals which are  
22 dismissed as frivolous or for failure to state a claim will be  
23 precluded from bringing any other civil action or appeal *in forma*  
24 *pauperis* "unless the prisoner is under imminent danger of serious  
25 physical injury." 28 U.S.C. § 1915(g). **Plaintiff is advised to read**  
26 **the new statutory provisions under 28 U.S.C. § 1915. This dismissal**

1 of Plaintiff's complaint may count as one of the three dismissals  
2 allowed by 28 U.S.C. § 1915(g) and may adversely affect his ability to  
3 file future claims.

4 IT IS SO ORDERED. The District Court Executive is directed to  
5 enter this Order, forward a copy to Plaintiff at his last known  
6 address, enter judgment, and close the file. The District Court  
7 Executive is further directed to forward a copy of this Order to the  
8 Office of the Attorney General of Washington, Criminal Justice  
9 Division.

10 DATED this 7th day of August 2008.

11  
12 s/ Fred Van Sickle  
13 FRED VAN SICKLE  
14 SENIOR UNITED STATES DISTRICT JUDGE  
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